IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 476 OF 2001

Basavanappa chanbasappa Halgode.
(Since deceased through heirs)
1A Smt. Kashibai Basavanappa Halgode .. Appellants.

V/s.

Secretary,
Krishi Utpanna Bazar Samiti. .. Respondents.

....

Mr. U.B. Nighot for the Appellants.

Mr. G.S. Godbole for the Respondents.

CORAM : V.R. KINGAONKAR, J.

11TH JANUARY 2007.

P.C. :

1. Heard learned Counsel.

2. This appeal is preferred against concurrent findings of both the Courts.

3. The dispute relates to a small part of building owned by Respondent A.P.M.C. Akkalkot. It appears

that somewhere in 1984, market yard was shifted and in that process disputed premises were given to the Appellant for the commercial purpose. The premises are situated in Shetkari Niwas which was constructed for facilitating temporary residents of agriculturists who would visit the market yard. The Appellant continued to remain in possession as licensee of the premises. His licence was terminated yet he did not vacate the premises. The suit was decreed. The Appeal was dismissed.

4. In this Second Appeal, much stress is given on the contention that the appellant had raised plea of tenancy which was not considered. Mr. U.B. Nighot, learned Counsel appearing for the Appellant, would submit that issue of tenancy ought to have been framed and failure to frame such issue has caused failure of justice. Mr. Godbole, learned Counsel appearing for the A.P.M.C. points out that the Appellant did not enter the witness box in the trial Court and failure to frame such issue is due to the fact that the Appellant did not give particulars about the so called tenancy rights.

5. The 1st Appellate Court has held that it was necessary for the Appellant/Defendant to set out details regarding the tenancy agreement. He did not plead what was the rent agreed between the parties, what was the contract in respect of the tenure and what was the date of commencement of the tenancy. The issue could not be raised on account of such vague pleadings and there was only passing reference in the written statement. Moreover, the conduct of the Appellant would show that he did not file any application before the trial Court to raise the issue in this context. The issues were raised by the Trial Court below exhibit 13 and immediately the Appellant could have sought addition of such issue in respect of his tenancy rights, if he was serious enough to resist the suit on such grounds. That apart, he did not adduce any evidence, in respect of his payment of rent. It appears that he was accommodated graciously when the market yard was shifted. The transitory accommodation in the premises was given to him which was not meant for commercial use. This is another indication of his being licencee. The Appellant cannot now claim any umbrella of protection on

technical plea regarding absence of issue in respect of the tenancy. No substantial question of law is involved nor there is perversity committed by the Lower Appellate Court in reaching the conclusion about the status of the Appellant as the licensee. Hence, the Appeal is dismissed. No costs.

(V.R.KINGAONKAR, J.)